

**BY ORDER OF THE COMMANDER
59TH MEDICAL WING**

59TH MEDICAL WING INSTRUCTION 44-150

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Medical

ADVANCE DIRECTIVES AND END-OF-LIFE

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This instruction implements Air Force Policy Directive 44-1, *Medical Operations*. This instruction provides policies and procedures for implementing the Patient Self-Determination Act Section of the 1990 Omnibus Budget Reconciliation Act (OBRA) and the Texas Advance Directive Act, Chapter 166 of the Texas Health & Safety Code. It addresses the components of compliance with the law, policy, procedure, education and publicity and assigns responsibility for implementing the provisions of the law and identifies the process by which compliance is achieved. This instruction applies to all personnel assigned, attached, or on contract to the 59th Medical Wing (59 MDW). This instruction does not apply to the 959th Medical Group, Air National Guard, or Air Force Reserve. This publication requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by 10 U.S.C. 55, *Medical and Dental Care*, and E.O. 9397 (SSN). The applicable SORN F044 AF SG D, and Automated Medical/Dental Record System is available at: <http://dpclo.defense.gov/privacy/SORNs/SORNs.html>. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the AF Form 847, *Recommendation for Change of Publication*. Requests for waivers must be submitted to the OPR listed above for consideration and approval. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with in accordance with (IAW) Air Force Manual 33-363, *Management of Records*, and disposed of IAW Air Force Records Information Management System Records Disposition Schedule.

SUMMARY OF CHANGES

The publication has been revised. This rewrite 59 MDWI 44-150 includes: references to inpatient care, and procedures for withdrawal of care have been removed to align this Instruction with the outpatient mission of applicable 59 MDW Groups. This publication has been substantially rewritten, and full review is recommended.

1. Overview. This instruction is intended to give medical treatment teams the appropriate guidelines when dealing with end-of-life issues to include Advance Directives (ADs).

2. Policy and Procedures.

2.1. The Department of Defense and 59 MDW are technically not covered under the provisions of the OBRA, which implements the Patient Self-Determination Act. However, 59 MDW voluntarily complies with the law out of concern for the best interests of the patients we serve. The 59 MDW will comply with Texas law on ADs and the law regarding informed consent and the patient's right to accept or refuse medical or surgical treatment. Questions regarding active duty patients and whether they can execute ADs can be addressed to Medical Law Consultants (MLC) at AFLOA/JACC-Medical Law Field Support Center (MLFSC).

2.2. In order to honor the wishes of the patient or patient's legal representative regarding medical treatment it is the policy of 59 MDW to:

2.2.1. Inquire regarding the existence of an AD and provide written information about the opportunity to obtain an AD via the base legal office or the MDW Medical Law Office.

2.2.2. Encourage execution of an AD before admission (or pre-procedure), while the patient is in the outpatient setting and has assistance from the patient's primary care manager (PCM).

2.2.3. Treat all patients equally in the provision of medical care without regard as to whether the patient has executed an AD.

2.2.4. Provide educational opportunities to staff and the community on issues concerning ADs.

2.2.5. Honor ADs completed in other states, so long as the document appears valid (signed, dated, and witnessed).

2.3. Specific Responsibilities.

2.3.1. 59 MDW staff involved in the admission or direct care of patients for overnight observation will be trained regarding Advance Directives as part of their unit orientation.

2.3.2. The Medical Law Consultant and the Ethics Function will consult with the staff on issues relating to ADs. MLFSC can be reached at 292-7808 for law guidance during normal duty hours. The MLCs may also be reached via the Command Operations Supervisor (292-7412), who will contact the MLFSC if a question arises after duty hours.

2.3.3. TRICARE Operations and Patient Administration (TOPA) will provide information regarding ADs upon request by patient(s).

2.4. Actions in the outpatient setting:

2.4.1. The PCM Team.

2.4.1.1. Will discuss with interested patients the information necessary for the patient to make an informed decision to either make or not make an AD. Should the physician wish to discuss ADs with the patient's family or potential surrogate decision makers, the provider should document in the medical records that the patient has given permission for the provider to discuss the patient's care with others, and with whom the patient's care information may be shared. Documentation could either be accomplished by the patient signing the medical records to document the permission or by the patient executing 59 MDW's form for release of information, DD Form 2870, *Authorization for Disclosure of Medical or Dental Information*, or other authorization that complies with Health Insurance Portability and Accountability Act (HIPAA). If needed, seek guidance from the Medical Law Consultant. Call Medical Law at 292-7808 or the HIPAA Privacy Office at 292-0381 during duty hours.

2.4.1.2. Immediately documents a verbal or written AD revocation on Standard Form (SF) 509, *Medical Record-Progress Note* and places in the patient's medical records, including the time, date and place of the revocation. This may be documented in any portion of the encounter note (i.e., assessment, plan, etc). Patients who revoke an existing AD will be directed to the TOPA Records Section to ensure any AD is removed.

2.4.2. Nursing Staff will:

2.4.2.1. Review the 59 MDW Form 174, *Admission Acknowledgements*, section 1 to determine the presence or absence of ADs. If an AD is present and appears valid (signed, dated, and witnessed), attach it to the AF Form 560, *Authorization and Treatment Statement* and file it in the patient's chart.

2.4.2.2. During the preadmission or "admission" process, Admissions and Dispositions (A&D) (or the pre-admission clerk) will ask the patient if he/she has an AD. If the patient has an AD, staff will record this in the patient's medical record. If the patient does not have an AD, but would like to accomplish one, they will be directed to the base legal office. **Note:** As an ambulatory surgical center, patients may remain overnight for observation, though not formally admitted.

2.4.2.3. If an AD is available, review the patient's wishes and notify the attending physician of the existence of the AD. Document the notification date and time on AF Form 3241, *Adult Admission Note* or AF Form 3244, *Pediatric Admission Note*.

2.4.2.4. In the event an AD cannot be located (i.e., not in medical record or left at home by patient), the patient, if he/she has capacity, the staff provider will document the patient's wishes in the medical record, if the patient has legal capacity.

2.4.2.4.1. A competent qualified adult patient may issue a directive by non-written means of communication in Texas. The patient must issue the non-written directive in the presence of the attending physician and two witnesses. This must be documented in the patient's record to include the names of the witness.

2.5. It is the policy of 59 MDW to not maintain in the patient's medical records a general power of attorney, any special power of attorney or other legal paperwork that is unrelated to healthcare, or the patient's will or other document that purports to dispose of the patient's property. 59 MDW personnel will not be responsible for archiving or filing a patient's AD for retrieval purposes during future encounters.

3. Directives in an Out-of-Hospital Setting (Out-of-Hospital Do Not Resuscitate (DNR) Order). Out-of-Hospital DNR (OOH DNR) Order is a legally binding Out-of-Hospital DNR Order, in the form specified by the state under the Advance Directive Act, prepared and *signed by the attending physician* of a person, that documents the instruction of a person or the person's legally authorized representative and directs health care professionals acting in an OOH DNR setting not to initiate or continue the following life sustaining treatment: Cardiopulmonary resuscitation; advanced airway management; artificial ventilation; defibrillation; transcutaneous cardiac pacing; and other life sustaining treatment as the term may be defined by the state, but does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care, alleviate pain, or provide water or nutrition. This OUT-OF-HOSPITAL DO NOT RESUSCITATE FORM may be obtained either through the Texas Department of Health and Safety website at <http://www.dshs.state.tx.us/emstraumasystems/dnr.shtm>. The form of the OOH DNR Order must be the exact form specified by the state of Texas.

3.1. Where the OOH DNR Order is Effective. The advance directive called the "Out-of-Hospital DNR Order" can be honored in out-of-hospital settings only, as defined in Attachment 1.

3.2. Executing an OOH DNR Order.

3.2.1. A Person with Capacity Executes an OOH DNR Order. A person with capacity may at any time execute a written OOH DNR Order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life sustaining treatment as found in the definition of OOH DNR Order.

3.2.2. The declarant must sign the OOH DNR Order in the presence of two witnesses, as defined above. The attending physician of the declarant must sign the OOH DNR Order, and shall record the existence of the order and the reasons for the order in the declarant's medical records.

3.2.3. A photocopy or facsimile of the original form executed may be honored just as the original.

3.2.4. The attending physician must state on the form that he/she is the attending physician of the individual and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life sustaining treatment on behalf of the person, and they must include a listing of those procedures not to be initiated or continued.

3.3. Procedures when a patient lacks capacity or is incapable of communication. If an adult person has not executed or issued an OOH DNR order and is incompetent, lacks capacity or otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, or agent named in a Medical Power of Attorney (MPOA) or Directive to Physicians, may execute an OOH DNR order on behalf of the person.

3.4. If the person does not have a legal guardian, an agent under a MPOA or Directive to Physicians, the attending physician and at least one qualified relative, may execute an OOH DNR order.

3.5. If the person who lacks capacity has not previously executed an AD and has no legal guardian or agent under a MPOA or Directive to Physicians, and has no qualified relative available to act for the person, an OOH DNR Order must be concurred with by another physician who is not involved in the treatment of the patient, or who is a representative of the Ethics Function of 59 MDW. **Note:** A qualified relative who wishes to challenge a decision made under this section must apply for temporary guardianship under Texas Estates Code 1251.151.

3.6. A decision to execute an OOH DNR Order must be based on knowledge of what the person would desire, if known, and must be made in the presence of at least two witnesses, as described in Attachment 1. The fact that an adult person has not executed or issued an OOH DNR Order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment.

3.7. Execution of OOH DNR Orders on Behalf of a Minor.

3.7.1. The following persons may execute an OOH DNR Order on behalf of a minor.

3.7.1.1. The minor's parents.

3.7.1.2. The minor's legal guardian, or

3.7.1.3. The minor's managing conservator.

3.7.2. A person listed in 3.7.1 may not execute an OOH DNR Order unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.

3.8. Compliance with OOH DNR Order. If the conditions are not determined to exist by the responding health care professionals at the scene, the OOH DNR Order will not be honored and life-sustaining procedures shall be initiated or continued. Health care professionals acting in an out-of-hospital setting are not required to accept or interpret an OOH DNR Order that does not meet the requirements of the Advance Directives Act.

3.8.1. When responding to a call for assistance, health care professionals shall honor an OOH DNR Order if:

3.8.1.1. The responding health care professionals discover an executed or issued OOH DNR Order on their arrival at the scene; and

3.8.1.2. The responding health care professionals establish the identity of the person as the person who executed or issued the OOH DNR Order, or for whom the OOH DNR Order was executed or issued.

3.8.2. If the person is wearing a DNR identification device, the responding health care professionals must comply.

3.8.3. The responding health care professionals must determine that the OOH DNR Order form appears to be valid in that it includes:

3.8.3.1. Written responses in the places designated on the form for the names, signatures, and other information required of persons executing, issuing, or witnessing the execution or issuance of the Order.

3.8.3.2. Date in the place designated on the form for the date the order was executed or issued.

3.8.4. The signatures of the declarant, or persons executing or issuing the Order, and the attending physician in the appropriate places designated on the form for indicating that the form has been properly completed.

3.9. DNR Identification Device.

3.9.1. A person who has a valid OOH DNR Order may wear a DNR identification device around the neck or on the wrist as prescribed by state rules.

3.9.2. The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid OOH DNR Order or has a valid OOH DNR Order executed or issued on the person's behalf. Responding health care professionals shall honor the validly executed OOH DNR Order executed or issued by the person when found in the possession of the person.

3.10. The OOH DNR Order form, or a copy of the form, when available, must accompany the person during transport.

3.11. A record shall be made and maintained of the circumstances of each emergency medical service's response in which an OOH DNR Order or DNR identification device is encountered.

3.12. An OOH DNR Order executed or issued, and documented or evidenced in the manner prescribed by the *Advance Directives Act*, Texas Health and Safety Code, is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

3.12.1. Identify himself or herself as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a MPOA who executed or issued the OOH DNR Order on behalf of the person request that cardiopulmonary resuscitation or certain other life sustaining treatment designated by the board be initiated or continued.

3.13. Duration of OOH DNR Order. An OOH DNR Order is effective until it is revoked.

3.14. Revocation of OOH DNR Order.

3.14.1. A declarant may revoke an OOH DNR Order at any time without regard to the declarant's mental state or capacity. An order may be revoked by:

3.14.1.1. The declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and removing the DNR identification device, if any.

3.14.1.2. A person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a MPOA who executed the OOH DNR

Order, or another person in the declarant's presence and at the declarant's direction, destroying the order form and removing the DNR identification device, if any.

3.14.1.3. The declarant communicating the declarant's intent to revoke the order.

3.14.1.4. A person who identifies themselves as the legal guardian, a qualified relative, or the agent of the declarant having a MPOA who executed the OOH DNR Order orally stating the person's intent to revoke the order.

3.14.2. An oral revocation takes effect only when the declarant or a person who identifies themselves as the legal guardian, a qualified relative, or agent having a MPOA who executed the OOH DNR Order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place of the notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the patient's medical record.

3.14.3. A person is generally not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

3.15. Re-execution of OOH DNR Order. A declarant may at any time re-execute or reissue an OOH DNR Order IAW procedures prescribed, including re-execution or reissuance after the declarant is diagnosed as having a terminal or irreversible condition.

3.16. A licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's DNR order. However, when responding to a call for assistance, emergency medical services personnel shall honor only a properly executed or issued OOH DNR order or prescribed DNR identification device in accordance with Texas law.

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Chief of the Medical Staff

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFI 41-210, *TRICARE Operations and Patient Administration Functions*, 6 June 2012

AFPD 44-1, *Medical Operations*, 1 September 1999

AFI 44-119, *Medical Quality Operations*, 16 August 2011

59MDWI 51-302, *Informed Consent and Refusal of Care*, 18 October 2013

Advance Directive Act, Chapter 166, Texas Health and Safety Code, 1 September 1999

Health Insurance Portability and Accountability Act of 1996

Memorandum, SGPSA, *Subject: Placement of Living Wills in Outpatient Treatment Records, Health Records, and Inpatient Treatment Records*, 9 November 1990

Omnibus Budget Reconciliation Act (OBRA) 1990

Patient Self-Determination Act (PSDA), 1866 of Social Security Administrative Services Act; 42 U.S.C. 1395cc, December 1, 1991

Texas Health Safety Code; Section 166.034, Issuance of Non-Written Directive by Competent Adult Qualified Patient

Texas Health Safety Code; Section 166.005, Enforceability of Advance Directives Executed in Another Jurisdiction

Texas Determination of Death Statute, Texas Health and Safety Code, 16 June 1995

Chapter 137. Declaration For Mental Health Treatment, Texas Civil Practice and Remedies Code, 18 June 1999

Chapter 597. Capacity of Clients to Consent to Treatment, Texas Health & Safety Code, 18 June 1999

Chapter 313. Consent to Medical Treatment Act, Texas Health & Safety Code, 1 September 1993

Adopted Forms

AF Form 560, *Authorization and Treatment Statement*

AF Form 847, *Recommendation for Change of Publication*

AF Form 3241, *Adult Admission Note*

AF Form 3244, *Pediatric Admission Note*

DD Form 2870, *Authorization for Disclosure of Medical or Dental Information*

SF Form 509, *Medical Record-Progress Note*

59 MDW Form 174, *Admission Acknowledgement*

Abbreviations and Acronyms

A&D—Admissions & Dispositions

AD—Advance Directive

DNR—Do Not Resuscitate

HIPAA—Health Insurance Portability and Accountability Act

IAW—In Accordance With

MDW—Medical Wing

MLC—Medical Law Consultants

MLFSC—Medical Law Field Support Center

MPOA—Medical Power of Attorney

OBRA—Omnibus Budget Reconciliation Act

OOH DNR—Out of Hospital Do Not Resuscitate Order

PCM—Primary Care Manager

SF—Standard Form

TOPA—Tricare Operations and Patient Administration

Terms

Adult—A person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

Advance Directive—A legal document (refers to the Directive to Physicians and Family or Surrogates, commonly referred to as a Living Will, Medical Power of Attorney [formerly known as Durable Power of Attorney for Health Care], Declaration for Mental Health Treatment and Out-of-Hospital-Do-Not-Resuscitate Order) allowing a person to give directions about future medical or mental health care or to designate another person to make medical decisions if they should lose decision-making capacity.

Cardiopulmonary Resuscitation—Any medical intervention used to restore circulatory or respiratory function that has ceased.

Competent Patient—A patient possessing the legal ability, based on reasonable medical judgment that assesses capacity, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of the treatment decision, and the reasonable alternatives to the proposed treatment decision.

Do Not Resuscitate (DNR) Identification Device—An identification device specified by the state that is worn for the purpose of identifying a person who has executed or issued an Out-of-Hospital DNR order, or on whose behalf an Out-of-Hospital DNR order has been executed or issued. Example: Patient wears a white hospital band with red “STOP DO NOT RESUSCITATE” or carries Texas Department of Health DO NOT RESUSCITATE form.

DNR Order—An attending staff physician’s order to withhold or withdraw life-sustaining procedures. A DNR order permits delivery of vigorous therapeutic support not otherwise

included within the definition of a life sustaining procedure. A DNR order must be based on (1) a valid written or non-written Directive to Physicians, (2) Medical Power of Attorney granting the agent the power to withhold or withdraw life sustaining procedures, or (3) the decision of a qualified legal guardian or next-of-kin and physician, or two physicians in certain circumstances under the provisions of Texas law and this instruction. In other words, a DNR order is not an advance directive under Texas law, and it cannot, by itself, serve as the basis for withholding or withdrawing care.

Health Care Provider—An individual or facility licensed, certified, or otherwise authorized to administer health care or treatment, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician or other health care provider, a residential care provider, or an inpatient mental health facility. This also includes the term “Health Care Professional,” which includes physicians, physician assistants, nurses, emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.

Healthcare or Treatment Decision—Means consent, refusal to consent, or withdrawal of consent to healthcare, treatment, service or a procedure to maintain, diagnose or treat an individual’s physical or mental condition, including such a decision on behalf of a minor.

Medical Record—Unless otherwise noted, this reference means a patient's inpatient medical record.

Mental Health Treatment—Means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, or emergency mental health treatment.

Minor Patient—Any patient under eighteen (18) years of age not otherwise emancipated. Active duty patients are considered adults regardless of age. Address questions regarding minority status to the Medical Law Consultant at 292-7808.

Non—Written Directive—An expression by the patient to have life-sustaining procedures withheld. Life-sustaining procedures are to be defined by the patient at the time of issuing the non-written Directive.

Out—of-Hospital DNR Order—A legally binding Out-of-Hospital DNR Order, in the form specified by the state under the Advance Directive Act, prepared and **signed by the attending physician** of a person, that documents the instruction of a person or the person’s legally authorized representative and directs health care professionals acting in an Out-of-Hospital setting not to initiate or continue the following life sustaining treatment: Cardiopulmonary resuscitation; advanced airway management; artificial ventilation; defibrillation; transcutaneous cardiac pacing; and other life sustaining treatment as the term may be defined by the state, but does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care, alleviate pain, or provide water or nutrition. Staff may obtain the form at A&D.

Out—of-Hospital—“Out-of-Hospital setting” means a location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.